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No. 90-1912

In The

Supreme Court of the United States

October Term, 1991

STEPHANIE NORDLINGER,

Petitioner,

v.

KENNETH HAHN, et al.,

Respondents.

On Writ Of Certiorari
To The Court Of Appeal Of The State Of California

AMICUS CURIAE BRIEF OF THE STATE OF CALIFORNIA ON THE MERITS IN SUPPORT OF RESPONDENTS

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STATEMENT OF INTEREST OF THE STATE OF CALIFORNIA AS AMICUS CURIAE

The State of California submits this brief pursuant to Rule 37 as amicus curiae in support of respondents and urges affirmance of the holding of the California courts below.

In 1978 the electorate of California enacted, as an initiative measure, Proposition No. 13 on the ballot. This measure amended the Constitution of the State of California with regard to the taxable value on which property taxes are based. The electorate approved Proposition 13 by an overwhelming margin and the result was a reduction in property taxes for most Californians.

Since the enactment of Proposition 13 in 1978, the governments of California, both state and local, have been wrestling with the implementation of Proposition 13. Because the property tax had been one of the primary sources of revenue for local governments prior to 1978, the approval of Proposition 13 resulted in a reduction of revenues to those entities. Proposition 13 also made it more difficult for local governments to raise new taxes because it imposed a supermajority requirement, two-thirds vote of the electorate, in order to do so. As a result, the State of California changed its financial structure in order for the local governments to carry out their statutory functions. This financial restructuring included revenue sharing from the state to local government and an increase of state funding of programs, primarily education. Given the financial restructuring resulting from Proposition 13, the governments of the state, cities, and counties of California have a vital interest in the outcome of petitioner's attack on the constitutionality of Proposition 13.

The State of California, through the Board of Equalization, has the statutory responsibility to ensure the uniform application of property tax laws in each of the 58 California counties. This is accomplished by the rule-making power of the Board of Equalization, Calif. Gov. Code, § 15606(c) and (e), and by other means. Calif. Gov. Code, § 15608. The Board of Equalization had a leading role in the initial implementation of Proposition 13 in each California county and continues to ensure that local practices are consistent with the current requirements of Proposition 13 and other property tax laws. A decision by this Court in this case affects the state's responsibilities for uniform application of property tax laws.

SUMMARY OF ARGUMENT

Petitioner and amici supporting petitioner (hereafter "amici") ask this Court to make a revolutionary holding: that because inflation exists, a property tax system that attempts to save taxpayers from the effects of inflation is unconstitutional. Pet. Br at 7; Amicus Curiae William K. Rentz' Br. at 2. In other words, petitioner and amici argue that when inflation is present the Constitution requires a state to use only current market value as the taxable value in a state property tax system. When the presence of inflation is one of the reasons for abandoning the previous California property tax system, to argue that taxpayers cannot be protected from its effects does not express any presently known constitutional principle.

Proposition 13 attempted to deal with the extraordinary increase in property values and property taxes that occurred in California in the 1970's. Proposition 13 did this by limiting taxable value to market value at date of acquisition, plus an inflation cap of two percent per year for increases above that value. The question presented by petitioner and amici in this attack on the constitutionality of Proposition 13, is how far this Court should go in limiting the exercise of a state's sovereign powers. The history of this Court's interpretation of the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution shows clearly that after 1937 this Court has refused to make state tax policy under the guise of constitutional interpretation. The Court, in fact, exercises greater restraint in tax matters than in other subject matter areas, thereby enabling states, within broad limits, to control their own tax policy.

The property tax has been the major source of States' revenue for many years. The basic structure of the property tax, as implemented by every state prior to

California's adoption of Proposition 13, was always based on a taxable value of current market value. This Court has enforced state law, not dictated state tax policy, in property tax cases by holding that, if state law required *all property* to have a taxable value of current market value, the Equal Protection Clause prohibited the taxable value of some class of property being perpetually lower than current market value.

Proposition 13 generally mandates that the taxable value of property for property tax purposes is the market value as of the date of acquisition plus two percent per year above that value. Under the facts of this case it is clear that Proposition 13 meets the dictates of the Equal Protection Clause.

Petitioner and amici argue that the fact that Proposition 13 is embodied in state law has no constitutional significance. Petitioner, however, provides the very argument that makes Proposition 13's embodiment in state law constitutionally significant. She argues that the results of the application of Proposition 13, the amount of her taxes as compared to the amount of her neighbors' taxes, creates illegal classifications. Petitioner's argument raises, for the first time in the history of property tax litigation, the legality of the basic structure of a state property tax system: a state's definition of taxable value. When confronted with an argument concerning the legality of classifications in state tax law, this Court has generally deferred to the state tax policy dictating the classification, requiring only a rational basis for the legislation to survive. Proposition 13 meets this test because it is designed to protect taxpayers from the effects of inflation which would otherwise be realized through taxation on unrealized appreciation. Moreover, Proposition 13

serves the People's legitimate purpose to instill certainty in the state's system of property taxation by establishing predictability in the amount of taxes to be paid in the future.

Some of the amici argue that this Court should pay less deference to state law when faced with an initiative measure than when faced with an act of the California Legislature. Amicus League of Women Voters, Br. at 12, fns. 9 and 10; Amicus Building Industry Association of Southern California, Br. at 12-14. They are wrong.

The United States Constitution, in its preamble and in its Ninth and Tenth Amendments, expresses the general rule that "The People" granted some power to government while retaining the right to exercise powers not given. Although the Constitution of the United States creates a government of representative democracy, there is no prohibition on the right of the People to enact legislation themselves. When this is done in a lawful manner, pursuant to the Constitution and statutes of California and upheld by the California Supreme Court, it is not "Tyranny of the Majority" or "Mob Rule," it is an expression of democracy. The choice by the voters may be unwise, or poor tax *policy*, or it may even violate a provision of the United States Constitution, but it does not have any constitutional significance with respect to this Court's standard of review. An initiative enactment is entitled to the same measure of deference as any other legislative act.

ARGUMENT

I.

INTRODUCTION

A. The California Property Tax System Prior To June 1978

From the time of its admission into the union in 1850 until June 1978 California law prescribed the conventional ad valorem property tax system, wherein the taxable value of property was its current market value. At least this was the theory; practice, however, lagged behind the theory. It became an impossible administrative job to value every property in California counties each and every year at its current market value.[1] *Rittersbach* v. *Board of Supervisors*, 220 Cal. 535 (1934), 32 P.2d 135, *cert. den.* 293 U.S. 592 (1934). The inability of the local assessors in California to value each property at market value each year led to other challenges to the system. Some taxpayers who had been assessed at market value sought to have their assessments lowered because others were assessed at less than market value. *Crothers* v. *County of Santa Cruz*, 151 Cal.App.2d 219, 311, P.2d 557 (1957); *Wild Goose Country Club* v. *County of Butte*, 60 Cal.App. 339, 212 P. 711 (1922).

In *Best* v. *County of Los Angeles*, 228 Cal.App.2d 655, 39 Cal.Rptr. 665 (1964), the California Court of Appeal held that, when equality of assessments is the issue, the test of that equality is not a comparison to neighboring

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[1] During the period prior to 1977, the assessment was 25 percent of market value and the tax rate applied to each $100 of assessed value. See *Michaels v. Watson*, 229 Cal. App. 2d 404, 40 Cal. Rptr. 464 (1964). In 1977, California changed its law to make the assessment at 100 percent of market value, with a corresponding reduction in tax rates so that the change in assessment ratio did not increase taxes.

property, but a comparison to the county as a whole. *Id.* at p. 659. The *Best* case gave legal approval to the practice of assessors in making appraisals of the entire county on a cyclical basis, with some county cycles being five years. See *Merced County Taxpayers Assn.* v. *Cardella*, 218 Cal.App.3d 396, 397, 267 Cal.Rptr. 62 (1990). Petitioner is wrong in stating at page 11 of her Brief on the Merits that prior to Proposition 13 assessors implemented the system embodied in Proposition 13. This is wrong because the assessors, as directed by the State Board of Equalization, did not merely reassess properties that were purchased or newly constructed, but would value all property located in one part of the county each year. It is clear that under the property tax system in effect in California prior to the enactment of Proposition 13, there were inequalities as to current value and taxes on comparable property.

B. The Advent of Proposition 13

The inequalities of the previous system were exacerbated during the 1970's. The single most inflammatory factor causing the taxpayer revolt of 1978, which resulted in the enactment of Proposition 13, was the dramatic increase in the burden of the property tax on California homeowners. Ehrman and Flavin, *Taxing California Property*, Third Edition, Callaghan & Company (1989), vol. I, § 2.01. The price of homes was escalating dramatically during the 1970's, with increases in prices of 25 to 50 percent in a year not uncommon. *Id.* By mid-1978 the average price of a home in Southern California was nearly double the national average, and, more importantly, there were no corresponding reductions in the property tax rates. *Id.* Between 1962 and 1978, assessed values in California tripled, tax rates increased by 51

percent, and the taxes on property more than quadrupled. *Id.* The percent of assessed value in single family residences in California grew from 36.6 percent of the total property tax roll in 1974-75 to 41.4 percent in 1977-78. *Id.*[2] Amicus American Planning Association points out that between 1975 and 1989 the median-priced home in California increased 371 percent, going from $41,690 to $196,521. Br. at 6.

After Proposition 13 qualified for the ballot, the California Legislature acted to put a competing measure, Proposition 8, on the ballot. This measure would have enacted a "split assessment roll" permitting residential real property to be taxed at a lower rate than other property. *Id.* at § 2.02. In the June 1978 primary election, Proposition 13 passed and Proposition 8 was defeated. *Id.* As pointed out by Amicus League of Women Voters, the immediate result was a reduction in the property tax bills of California property taxpayers. Br. at 8.

After the passage of Proposition 13 there was a challenge to it on grounds that it violated the Equal Protection Clause and inhibited the constitutional right to travel, as well as on other grounds. The California Supreme Court upheld Proposition 13 in *Amador Valley Joint Union High School District* v. *State Board of Equalization*, 22 Cal.3d 208, 149 Cal.Rptr. 239, 583 P.2d 1281 (1978) (hereafter *"Amador"*).

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[2] The tax under the pre-Proposition 13 system approached two percent of the appraised value. This is not uncommon in states that have a current value system.

The *Amador* decision established the law in California from 1978 to this day. The *Amador* court held that Proposition 13 did not violate the equal protection of the laws, relying on United States Supreme Court rulings that established "[s]o long as a system of taxation is supported by a rational basis and is not palpably arbitrary, it will be upheld." *Id.* at p. 234. The *Amador* court distinguished the previous current value system from Proposition 13's acquisition value concept,[3] and found the acquisition value system to be based upon the rational principle that an owner is able to predict his future property taxes. *Id.* at p. 235. In addition, the *Amador* court pointed out that the acquisition value system may be fairer in that the taxes will reflect what any owner, old or new, was willing to pay, and rejected, without reservation, the argument that property of equal current value *must* be taxed equally, regardless of original cost. *Id.* at p. 236.

The *Amador* decision also rejected the argument that Proposition 13 violated the constitutional right to travel. The argument presented to the court was that "nonresidents or newly arrived residents" will have to pay a greater amount of property taxes than established residents, inhibiting the right to travel by deterring movement to another location. The court rejected the argument by holding that Proposition 13 was intended to benefit all owners, past and future, resident and non-resident. *Id.* at p. 238.

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[3] Acquisition value is the market value of the property as of its change of ownership, not necessarily the purchase price. *Dennis* v. *County of Santa Clara*, 215 Cal.App.3d 1019, 263 Cal.Rptr. 887 (1989).

After this Court's decision in *Allegheny Pittsburgh Coal* v. *Webster County*, 488 U.S. 336 (1989), several California taxpayers seized upon a footnote in that case to again challenge Proposition 13. The lower California courts again upheld the initiative against these attacks. *Nordlinger* v. *Lynch*, 225 Cal.App.3d 1259, 275 Cal.Rptr. 684 (1990); *Northwest Financial, Inc.* v. *State Bd. of Equalization*, 229 Cal.App.3d 198, 280 Cal.Rptr. 24 (1991); *R.H. Macy & Co.* v. *Contra Costa County*, 226 Cal.App.3d 352, 276 Cal.Rptr 530 (1990), *cert. granted* 111 S.Ct. 2256 (1991), *cert. dismissed* 111 S.Ct. 2923 (1991). This Court should tell petitioners that the California courts have correctly resolved the questions.

II.

PROPOSITION 13 DOES NOT VIOLATE THE COURT'S HISTORIC EQUAL PROTECTION CLAUSE ANALYSIS

A. This Court In Modern Times Has Rejected All Invitations To Second-Guess The Wisdom Of State Tax Policies

Amicus State of California believes a review of the history of the Equal Protection Clause is important because that history demonstrates that petitioner's argument presents a unique issue to the Court and demonstrates why any adverse decision should be given prospective effect. The United States Supreme Court applied a "substantive due process" test to define the prohibitions of Due Process and Equal Protection Clauses from the enactment of the Fourteenth Amendment in 1868 until 1937. Both of these clauses were said to employ a similar test, a rational relationship between the legislation and the object of the legislation, and the result during this period was generally to overturn the legislation

because the Court found it to be arbitrary. See *Lochner* v. *New York*, 198 U.S. 45 (1905). The beginning of the change was Justice Holmes' dissent in *Lochner*. Justice Holmes stated in pertinent part:

> "This case is decided upon an economic theory which a large part of the country does not entertain. If it were a question whether I agreed with that theory, I should desire to study it further and long before making up my mind. But I do not conceive that to be my duty, because I believe my agreement or disagreement has nothing to do with the right of a majority to embody their opinions in law . . . The Fourteenth Amendment does not enact Mr. Herbert Spencer's Social Statics. . . . " *Id.* at p. 75.

For much of the 30-year period following *Lochner*, Justices Holmes and Brandeis dissented when a decision found a statute to be unconstitutional, *Louisville Gas Co.* v. *Coleman*, 277 U.S. 32 (1928), *Quaker Cab Co.* v. *Penna*, 277 U.S. 389 (1928), *Royster Guano Co.* v. *Virginia*, 253 U.S. 412 (1920), and wrote the opinion for the court when the classification was upheld, *White River Co.* v. *Arkansas*, 279 U.S. 692 (1929), *Quong Wing* v. *Kirkendall*, 223 U.S. 59 (1912). See also Justice Brandeis' dissent in *Liggett Co.* v. *Lee*, 288 U.S. 517, 541 (1933).

The cases of *Nebbia* v. *New York*, 291 U.S. 502 (1934) and *West Coast Hotel Co.* v. *Parrish*, 300 U.S. 379 (1937) completed the change. *Nebbia* rejected a due process challenge to the fixing of the price of milk by New York and *West Coast Hotel Co.* rejected a due process challenge to a state minimum wage law. These were the very type of statutes that were being overturned under the substantive due process approach. The Court's analysis of the Equal Protection Clause followed this change. *Metropolitan Co.* v. *Brownell*, 294 U.S. 580 (1935). See *Lincoln Union* v. *Northwestern Co.*, 335 U.S. 525, 536 (1949). The

Court's modern approach has been described as the rational basis test. A major premise of the rational basis test is that even improvident decisions will eventually be corrected by the democratic process. *Cleburne* v. *Cleburne Living Center, Inc.*, 473 U.S. 432, 440 (1985).

Under the rational basis test, the purpose of the Equal Protection Clause is not to prohibit all discrimination, but only that which is found to be invidious. The Court presumes the statute is constitutional and puts the burden on the challenger to prove that invidious discrimination has taken place. This approach usually results in a finding that the discrimination is not invidious. This Court has recognized in this process " . . . the courts are not empowered to second-guess the wisdom of state policies. [Citation omitted.] Our review is confined to the *legitimacy* of the purpose." *Western & Southern L.I. Co.* v. *Bd. of Equalization*, 451 U.S. 648, 670 (1981); emphasis in original.

In *San Antonio School District* v. *Rodriguez*, 411 U.S. 1 (1973), this Court reviewed the traditional standard of review of the Equal Protection Clause, requiring only that the " . . . state's system be shown to bear some rational relationship to legitimate state purposes. . . . " *Id.* at p. 40, and then stated:

> " . . . We have here nothing less than a direct attack on the way in which Texas has chosen to *raise* and disburse state and local tax revenues. We are asked to condemn the State's *judgment*. . . . " *Id.*; emphasis added.

The Court declined to do so in the following words:

> "Thus, we stand on familiar ground when we continue to acknowledge that the Justices of this Court lack both the expertise and familiarity with local problems so necessary for the making of wise decisions with respect to the *raising* and

> disposition of *public revenues*. . . . " *Id.* at p. 41; emphasis added.

The *San Antonio School District* case rejected any court interference with a state's judgment on how public revenues are raised. This is the precise issue raised by this case.

B. Proposition 13 Comes Within The Decisions Of This Court Upholding Property Tax Statutes

Tax statutes have been analyzed differently from non-tax statutes by this Court. This undoubtedly was because taxation is an essential ingredient of government. See *Brown-Forman Co.* v. *Kentucky*, 217 U.S. 563 (1910) and *Flint* v. *Stone Tracy Co.*, 220 U.S. 107 (1911). The Equal Protection Clause requires all taxpayers that are similarly situated to be treated with rough equality. *Allegheny Pittsburgh Coal* v. *Webster County*, 488 U.S. at p. 343.

Prior to the enactment of Proposition 13 in California in 1978, every state of the union employed the standard ad valorem system of property taxation, wherein the taxable value of property was the current market value of the property. The problem this system engendered was not one of classification, because all properties were in the same general classification of current market value, but one of administration of the state law that would comply with the requirements of the United States Constitution. See *Cumings* v. *National Bank*, 101 U.S. 153 (1879).

This Court has consistently held that discriminatory taxation contravening the express requirements of *state law* is violative of the United States Constitution. *Green* v. *Louis & Interurban R.R. Co.*, 244 U.S. 499 (1917); see *Raymond* v. *Chicago Tractor Co.*, 207 U.S. 20 (1907) and *Sioux City Bridge* v. *Dakota County*, 260 U.S. 441 (1923). It

became established United States Supreme Court doctrine that:

> " . . . intentional systematic *undervaluation* by state officers of other taxable property *in the same class* contravenes the constitutional right to be taxed upon the full value of his property. . . . " *Sunday Lake Iron Co.* v. *Wakefield*, 247 U.S. 350, 352-353 (1918); emphasis added; see *Cumberland Coal Co.* v. *Board*, 284 U.S. 23, 28 (1931), *Hillsborough Township* v. *Cromwell*, 326 U.S. 620, 623 (1946).

Allegheny Pittsburgh Coal v. *Webster County*, 488 U.S. 336, involved the traditional property tax single classification where the taxable value of all property was current market value. The lower court decision in that case, *In re 1975 Tax Assessments Against Oneida Coal Co.*, 360 S.E.2d 560 (W.Va. 1987), makes it clear that West Virginia had the same problems as pre-Proposition 13 California had in administering its current value system. See *Rittersbach* v. *Board of Supervisors*, 220 Cal. 535, *Crothers* v. *County of Santa Cruz*, 151 Cal.App.2d 219, and *Best* v. *County of Los Angeles*, 228 Cal.App.2d 665. The West Virginia Supreme Court stated that West Virginia law required that:

> " . . . taxation shall be equal and uniform throughout the State, and all property, both real and personal, shall be taxed in proportion to its value to be ascertained as directed by law." *1975 Tax Assess. Against Oneida Coal Co.*, 360 S.E.2d 560, at p. 562.

This Court in *Allegheny*, 488 U.S. 336, reiterated that the constitutional requirement is the " . . . seasonable attainment of a rough equality in tax treatment of similarly situated property owners. . . . " *Id.* at p. 343. In *Allegheny*, the similarly situated properties were every property in the county because of the single classification of current market value. The Webster County Assessor violated this requirement because newly-sold property

was assessed at 50 percent of the value as shown on the deed and properties that were not resold were assessed at old values with only minor value modifications. This Court found that method insufficient to " . . . seasonably dissipate the remaining disparity . . . " between the assessments on the newly-sold property and the properties that were not newly-sold. *Id.* at p. 344.

In *Allegheny*, this Court recognized the right of the state to divide taxpayers into reasonable classifications, *id.*, but found that " . . . West Virginia had not drawn such a distinction. . . . " *Id.* at p. 345. The West Virginia procedure was applied on the Webster County Assessor's own initiative and not pursuant to the law of West Virginia. Such an act resulted in intentional, systematic undervaluations by the Webster County Assessor and, for that reason, violated the Equal Protection Clause. Thus, while the *Allegheny* decision is consistent with those decisions by this Court involving property tax systems predicated on taxable value as current market value, the holding of that case was based upon unequal treatment by local tax authorities and not upon installation of current market value as the only constitutionally permissible system.

In order to determine whether Proposition 13 meets the requirements of the Equal Protection Clause, as discussed in *Allegheny*, it is first necessary to draw a distinction between the West Virginia law and the California law. Proposition 13 changed California's previous current value property tax system to one based on acquisition value. In reality California has adopted a single classification, taxable value based upon acquisition value instead of current value. This system meets the requirement of " . . . seasonable attainment of a rough equality in tax treatment of similarly situated property owners . . . "

because property taxes for similarly situated property in California are based upon acquisition value.[4] Indeed, petitioner does not argue otherwise because she admits that property is taxed at its acquisition value. Pet. Br. at 18.

Proposition 13 does not result in intentional, systematic *undervaluations* that have been condemned by this Court. Terms such as "undervaluation" pose problems when attempting to analyze any factual situation because they presume a standard against which to measure. In *Allegheny*, the state law set the taxable value standard at current market value. Proposition 13 sets the taxable value standard at acquisition value. In that context there would be no "undervaluation" if comparably priced properties bearing the same acquisition date have similar acquisition date values. Any argument concerning "undervaluation" wrongly presumes that the United States Constitution requires the states to use a current value system.

Amicus International Association of Assessing Officers relies on effective tax rates and coefficients of dispersion to show inequalities. Br. at 11-12. Assuming the presence of inflation, the acquisition value system will show that those properties that do not sell will be assessed at less than those that do sell. That is a reflection of the Proposition 13 acquisition value system. Similarly, the coefficient of dispersion for California will always show a difference between assessed values and current market values. Amicus International Association of

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[4] Amicus International Association of Assessing Officers misstates the effect of Proposition 13 when it states that properties are " . . . assessed and taxed in a variety of ways. . . . " Br. at 14.

Assessing Officers points out that California ranks thirty-third in coefficient of dispersion, well within the mainstream of recognizable measures of central tendency.

C. The Amount Of Petitioner's Taxes Does Not Define Any Unconstitutional Classification

The above review makes it clear that, in matters of property taxation, the legality of the basic structure of the property tax was never an issue because all state property taxes used current market value as the taxable value. Petitioner challenges, for the first time, the legality of the basic structure of a state's property tax system, that is the definition of taxable value, in the guise of "classification." Since this is the first time that this issue has arisen in a property tax case, decisions in tax cases other than property taxes should guide the analysis.

The case of *Ohio Oil Co.* v. *Conway*, 281 U.S. 146 (1930) provides a good point of reference to make this analysis. In that case, prior to 1928 the State of Louisiana levied an oil severance tax based upon the value of the oil. In 1928 the state law changed the tax base from value to quantity severed. One of the contentions of Ohio Oil was that the state was constitutionally required to base its tax upon the value. *Id.* at p. 161. The Court called that contention " . . . wholly inadmissible. . . . " *Id.* The Court refused to subject the state's taxing power to such an intolerable supervision, which supervision is beyond the protection of the Fourteenth Amendment. The Court stated:

> " . . . The States have a wide discretion in the imposition of taxes. When dealing with their proper domestic concerns, and not trenching upon the prerogatives of the national government or violating the guarantees of the Federal Constitution, the States have the attribute of sovereign power in devising their fiscal systems

to insure revenue and foster their local interests. . . . " *Id.* at p. 159; see also *Allied Stores* v. *Bowers*, 358 U.S. 522, 526-527 (1954).

To this end, the Court in *Madden* v. *Kentucky*, 309 U.S. 83 (1940) stated:

> " . . . Traditionally classification has been a device for fitting tax programs to local needs and usages in order to achieve an equitable distribution of the tax burden. It has, because of this, been pointed out that in taxation, even more than in other fields, legislatures possess the greatest freedom in classification. . . . "
>
> " . . . [T]he presumption of constitutionality can be overcome only by the most explicit demonstration that a classification is a hostile and oppressive discrimination against particular persons and classes. . . . " *Id.* at p. 88; footnotes omitted. See also *Carmichael* v. *Southern Coal Co.*, 301 U.S. 495 (1937).

Thus, classifications in tax matters have generally not been found to involve invidious discrimination. The Court has upheld the California inheritance tax statute that resulted in inequalities in the amount of the tax between taxpayers, *Stebbins* v. *Riley*, 268 U.S. 137 (1925), a license fee on chain stores which fee per store increased as the number of stores in the chain increased, *Tax Commissioners* v. *Jackson*, 283 U.S. 527 (1931), *Atl. & Pac. Tea Co.* v. *Grosjean*, 301 U.S. 412 (1937), a classification for taxes imposed only on public utilities, *Rapid Transit Corp.* v. *New York*, 303 U.S. 573 (1938), an exemption from ad valorem taxation for products belonging to a nonresident if held in storage, *Allied Stores of Ohio* v. *Bowers*, 358 U.S. 522 (1959), a statute which abolished personal property taxes for individuals but not for corporations, *Lehnhausen* v. *Lake Shore Auto Parts Co.*, 410 U.S. 356 (1973), and an insurance retaliatory tax imposed only on some out-of-

state insurance companies. *Western & Southern L.I. Co.* v. *Bd. of Equalization*, 451 U.S. 648.[5]

This Court's approach was stated in *Kahn* v. *Shevin*, 416 U.S. 351 (1974), at 355, quoting *Lehnhausen* v. *Lakeshore Auto Parts Co.*, 410 U.S. 356, 359, as follows:

> " . . . We have long held that '[w]here taxation is concerned and no specific federal right, *apart from equal protection*, is imperiled, the states have large leeway in making classifications and drawing lines which in their judgment produce reasonable systems of taxation.' " *Id.* at p. 355; emphasis added.

If it is at least debatable whether the state lawmakers " . . . *rationally could have believed* . . . " that the legislation would promote an objective of a legitimate state purpose, parties challenging the legislation under the Equal Protection Clause cannot prevail. *Western & Southern L.I. Co.* v. *Bd. of Equalization*, 451 U.S. 648, 670, 672, 674; emphasis in original. In *New Orleans* v. *Dukes*, 427 U.S. 297 (1976), this Court upheld a classification based upon the length of operating a business. The Court stated:

> "When local economic regulation is challenged solely as violating the Equal Protection Clause, this Court consistently defers to legislative determinations as to the desirability of particular statutory discriminations. . . . " *Id.* at p. 303, citation omitted.

Soon after passage of Proposition 13, *Amador* resolved the same questions that are raised in this petition and no petition for certiorari was taken to this Court at that time. Now, 14 years after the enactment of Proposition 13, petitioner attacks it on the basis that the

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[5] This Court in *Bell's Gap Railroad Co.* v. *Pennsylvania*, 134 U.S. 232 (1890) rejected an argument that securities and bonds must be taxed at their market value. In that case the court held that there may be some justified discrimination in tax laws.

passage of time has shown some results (i.e. amount of taxes) that make the statute unconstitutional. Petitioner's sole reliance on the amount of taxes misperceives the standards set by this Court in an Equal Protection Clause analysis.

Petitioner's argument that the amount of taxes she pays, as compared to the amount of taxes her neighbor pays, creates an illegal classification, is based upon an assumption that leads to an erroneous constitutional analysis. If inflation did not exist, the petitioner's value and taxes would be the same as her neighbor's comparable property, no matter what the date of acquisition. In order to argue an illegal classification based on the amount of taxes, petitioner must assume perpetual inflation. Inflation in real estate prices is not an inevitable phenomenon and should not control constitutional analysis for two reasons. First, adoption of such an analytical framework would mean that a statute unconstitutional during an inflationary period may "become" constitutional during an ensuing period of deflation such as the Great Depression. Second, the increase in real estate prices vary from state to state. Thus, one state with little or no increase in real estate prices may be able to adopt the Proposition 13 system and attain the required rough equality of tax treatment of similarly situated properties, while another state with high increases in real estate prices may be prevented from adopting the same system. Petitioner's argument thus fails as an expression of constitutional principle.

Petitioner's argument that classification is created by amount of taxes paid also ignores that this Court has looked at the amount of taxes only in limited circumstances. Generally, the Commerce Clause forbids higher state taxes on out-of-state businesses than in-state businesses. Thus, the Court often looks to the amount of taxes

for its Commerce Clause analysis. Insurance companies have been exempted from coverage of the Commerce Clause in the McCarran-Ferguson Act, 59 Stat. 33, 15 U.S.C. § 1011 et seq., *Western & Southern L.I. Co.* v. *Bd. of Equalization*, 451 U.S. 648, 653, and the Court looks to the Equal Protection Clause to protect out-of-state insurers from being taxed more than in-state insurers, under certain circumstances. See *Metropolitan Life Ins. Co.* v. *Ward*, 470 U.S. 869, 880 (1985). Even if these holdings were extended to invalidate all promotion of domestic business by discriminating against nonresident competitors, these cases do not apply because Proposition 13 has not been shown to result in tax differentials between in-state and out-of-state businesses. The property of both in-state business and out-of-state business are treated the same under Proposition 13. Each will be taxed on the acquisition value of its property.

Petitioner's argument that the amount of taxes paid creates separate classifications does not aid her. Assuming for purposes of argument that there is classification based on the difference in amount of taxes, the approach taken by Proposition 13 is rationally related to its object because it implements a basic economic principle: that planning for those future tax expenditures is preferable to not being able to plan for future tax expenditures. In actuality, the real-life effect of acquisition value is to fix in time when a property owner can determine future property tax expenditures. Such planning was not possible under the previous California property tax system because neither inflation nor rates of tax could be predicted with any certainty. California voters, with the enactment of Proposition 13 in 1978 told government that such planning is important. *Amador*, 22 Cal.3d 208, held

that this was one of the rational bases of the enactment of Proposition 13. *Id.* at p. 235.

It was the inflation in the price of property that spawned Proposition 13 and it is inflation about which petitioner is complaining. She claims that she will pay about $1,700 per year in property taxes while her neighbors, who purchased homes in 1975, will pay only $412 per year. Using the statutory tax rate of one percent indicates that these homes have risen from a market value of about $41,000 in 1975 to $170,000 in 1988. The person whose date of acquisition is 1975[6] will pay lower taxes than one, like petitioner, who purchases a comparable property in 1988. The person who purchases in 1988, however, will pay lower taxes than someone purchasing a comparable property in 1992. Petitioner may pay a higher amount of taxes than some, but in the long run she will pay a lower amount of taxes than many others. One of the primary purposes of Proposition 13, to protect taxpayers from being taxed on the unrealized appreciation of their property, is available for everyone who purchases real property in California.

Indeed, to persons on a fixed income who owned property in 1978, it would seem as unfair to them to have a taxable value of $170,000 in 1988, an expectation they may never have had, as it is to petitioner to have a taxable value as of her date of acquisition. In contrast, granting petitioner's underlying assumption of perpetual inflation, it is clear in comparing amounts of tax paid that, in the long run, everyone benefits equally from the

---

[6] Many properties with a 1975 acquisition date may not reflect 1975 market value because of the physical impossibility faced by assessors in switching from a current value system to an acquisition value system. The California Legislature enacted statutory guidelines to resolve this administrative problem.

general provisions of Proposition 13. Petitioner is wrong in asserting that the tax system imposes a barrier for new homeowners. The real barrier is not the tax amount, but the escalation of sale prices in petitioner's neighborhood.

III.

PROPOSITION 13 SHOULD NOT BE JUDGED UNDER A HEIGHTENED SCRUTINY STANDARD FOR ANY REASON AND DOES NOT INHIBIT THE CONSTITUTIONAL RIGHT TO TRAVEL

A. Heightened Scrutiny Should Not Be Applied To Test The Constitutionality Of Proposition 13

Under the rational basis test the state law is presumed to be constitutional. This Court has held that in some circumstances constitutionality will not be presumed, thus applying a stricter standard to determine the validity of the state law. The cases in which this stricter standard is employed, however, have involved state classifications that relate to "sensitive and fundamental rights." *Weber* v. *Aetna Casualty & Surety Co.*, 406 U.S. 164, 172 (1972).

The foundation of the stricter test has been said to be a footnote in the case of *U.S.* v. *Carolene Products Co.*, 304 U.S. 144 (1938), wherein the Court suggested a higher standard for legislation involving " . . . prejudice against discrete and insular minorities. . . . " *Id.* at pp. 152-153, fn. 4. See *Graham* v. *Richardson*, 403 U.S. 365, 372 (1971) and *Sugarman* v. *Dougall*, 413 U.S. 634, 642 (1973). There are some areas where the Court applies a very strict scrutiny standard and there are some areas where there is an acknowledged middle tier of analysis between rational basis and strict scrutiny, such as in gender-based discrimination. See *Craig* v. *Boren*, 429 U.S. 190, 210 (1976) (conc. opn. of Justice Powell).

As this Court stated in *Cleburne* v. *Cleburne Living Center, Inc.*, 473 U.S. 432 (1985):

> " . . . [h]eightened scrutiny inevitably involves substantive judgments about legislative decisions. . . . " *Id.* at p. 443.

Such substantive judgments by this Court should not become the norm, as petitioner suggests.

Proposition 13 does not discriminate against any group that has been provided heightened protection under this Court's Equal Protection Clause analysis. The general provisions of Proposition 13 subject everyone who purchases property in California to the same tax treatment, based on value as of the acquisition date. Nor does the amount of taxes establish any classes that are subject to heightened scrutiny under traditional Equal Protection Clause analysis. The distinction between persons who have owned property since 1975 and persons who have acquired property after 1975 does not define any protected class. Proposition 13 requires reassessment upon objective and neutral criteria, a change of ownership or new construction. Reassessment under the general provisions of Proposition 13 has nothing to do with who the purchasers are or where they come from.

Amicus League of Women Voters attempts to establish a significant distinction between long-term homeowners and short-term homeowners. Br. at 11. This distinction is not sound for two reasons. First, it assumes perpetual inflation and such an assumption should not be the basis of constitutional analysis. Second, even if perpetual inflation is assumed, there can be no showing that Proposition 13 is detrimental to petitioner. Petitioner's property rose in value from $170,000 in 1988 to $205,000 in 1989, Joint Appendix, p. 20, an increase of 20 percent in the first year of ownership. It is now four years after petitioner purchased her home and she continues to pay

taxes on her adjusted acquisition value, while others who pay current prices are taxed on their higher acquisition values. The question is whether petitioner is a short-term homeowner, incurring a detriment, or a long-term homeowner, enjoying a benefit. Employing petitioner's assumption of perpetual inflation, the answer is that she is both, and this is the real reason no group can be identified as being discriminated against by Proposition 13. Any analysis of the effects of Proposition 13 will not lead to a heightened scrutiny because virtually everyone benefits in some way from Proposition 13 and virtually everyone is burdened in some way by Proposition 13.

B. Proposition 13 Does Not Inhibit The Constitutional Right To Travel

Petitioner raises the right to travel issue solely in an attempt to argue for heightened scrutiny. This effort must fail.

Although the textual source of the right to travel guaranteed by the Constitution is not entirely clear, it has been described as a right to interstate migration, *Zobel* v. *Williams*, 457 U.S. 55, 66 (1982) (Brennan, J. concurring) and as a fundamental right to settle in another state, *Attorney General of N.Y.* v. *Soto-Lopez*, 476 U.S. 903, 920 (1986) (O'Connor, J. dissenting). The right to travel is implicated only when a state law actually deters travel, when impeding travel is its primary objective, or when it seeks to penalize the exercise of the right. *Id.* at 903 (plurality opn. of Brennan, J.). There has been no showing by petitioner that Proposition 13 has actually deterred travel of any person or business or that Proposition 13 actually penalizes taxpayers for exercising the right to travel. It is not argued, and has not been shown, that the primary objective of Proposition 13 was to impede travel.

As shown above, Proposition 13, by its terms, applies equally to all purchasers, whether they are long-term California residents or newly-arrived California residents. Indeed, the pejorative term "welcome stranger" used by petitioner and amici does not apply to Proposition 13.

Amicus International Association of Assessing Officers illustrates why the right to travel is not inhibited by Proposition 13. In attempting to show the impact of Proposition 13, amicus inserts a table. Br. at 3. This table does not depict the true impact of Proposition 13 for two reasons. First, the table assumes a rate of four percent of acquisition value, while, in reality, Proposition 13 mandates a tax rate cap of one percent. Second, the assessed value in California is the acquisition value plus two percent per year, and the table does not reflect this increase.

The table does, however, depict the property tax as implemented in other states. Using the information in that table, petitioner would be paying more than $8,000 in taxes ($205,000 x .04) instead of the less than $2,000 she pays under Proposition 13. At minimum this table shows that people moving from other states to California would enjoy a tax reduction upon purchasing comparably priced property in California and have their future taxes benefited by applying the acquisition value concept. This surely does not inhibit or deter anyone from moving from a current-value state to California.

IV.

ASSUMING FOR PURPOSES OF ARGUMENT THAT THIS COURT INVALIDATES THE ACQUISITION VALUE CONCEPT CONTAINED IN PROPOSITION 13, THE DECISION SHOULD BE APPLIED PROSPECTIVELY ONLY

This Court currently grants wider latitude in civil cases than in criminal cases as to the date a decision is

effective. In *Griffith* v. *Kentucky*, 479 U.S. 314 (1979), the Court announced that all criminal decisions will be applied retroactively. The Court, however, has struggled with the issue of prospectivity and retroactivity in recent tax cases. *McKesson* v. *Division of Alc. Beverage*, 100 S.Ct. 2238 (1990); *American Trucking Assns.* v. *Smith*, 110 S.Ct. 2323 (1990); *Jim B. Beam Distilling Co.* v. *Georgia*, 111 S.Ct. 2939 (1991). The case at bar presents much different questions than these tax cases, and any analysis of prospectivity in this case should be grounded on the principles contained in the leading civil case on the subject, *Chevron Oil* v. *Huson*, 404 U.S. 97 (1971).

In *Chevron Oil*, this Court enunciated a three-part test to determine whether a decision would be given prospective or retroactive effect. The test contained the following elements:

1. Whether the court announces a new principle of law – this could be done by overruling precedent or by deciding a case of first impression whose resolution was not clearly foreshadowed;

2. Whether application of prospective application would further or retard the operation of the law; and

3. Whether there is inequity imposed by a strict retroactive operation of the decision.

Application of these tests should result in a prospective application for any adverse decision on Proposition 13.

The historical development of the interpretation of the Equal Protection Clause in tax cases shows clearly that states are given broad latitude to develop their own tax systems. California has done this with its adoption of Proposition 13. If this Court invalidates Proposition 13, it must do so by overruling or severely limiting established

precedent, and should confine any such ruling to prospective application only. It is clear that Proposition 13 does not create an illegal classification under existing precedent and meets the historic standards of the rational basis test.

In addition, as pointed out above, current value had been the only basis of taxable value in property tax systems until 1978, when Proposition 13 was enacted. Petitioner presents, for the very first time, the question of whether the very heart of a state's property tax system, the definition of taxable value, is legal. Thus, if the court holds that it is not legal, it has decided a case of first impression whose resolution was not clearly foreshadowed. This is the enunciation of a new rule of law subject to prospective application under *Chevron Oil* v. *Huson*, 404 U.S. 97.

The reason a decision adverse to the State of California in this case must be applied prospectively is the chaos and uncertainty the decision will have on the population of the State of California. The financial relationships between different levels of California government have been restructured since the adoption of Proposition 13 in 1978. The property tax was the main source of revenue to California cities and counties until 1978. This revenue to cities and counties has had a relative decline since 1978, and thus other forms of taxation, and state cost-sharing, have replaced the previous structure. The financial structure of the State of California is now built in part on its response to Proposition 13, and any undoing of Proposition 13 will require time to reconfigure the financial structure of the state.

Here are some of the questions that must be answered before a reasoned response to an overturning of Proposition 13 can be implemented:

1. Does a decision invalidating Proposition 13 mean that California is required to use a current value property tax system?

2. Does a decision invalidating Proposition 13 require, permit or prohibit levy of escape assessments authorized by California law for the past four years?[7] Cal. Rev. & Tax. Code, §§ 531-532. See also amicus Cal. Assessor's Association, Br. at A-2.

3. Does the financial picture of local governments change because of an adverse decision, and if so, how?

4. Do local governments need to increase budget and staff to implement the system that results from an adverse decision? See Appendix.

5. How does an adverse decision impact the budget of the state?

These are only a few of the very difficult questions that must be answered before any response to an adverse decision could be determined. A retroactive effect of the overturning of Proposition 13 will create uncertainty and potential chaos for the State of California. These are the considerations that *Chevron Oil* v. *Huson*, 404 U.S. 97, must have been contemplating when it set forth the rules governing prospective application. Prospective application is required from the standpoint of both law and equity. As this Court held in *Davis* v. *Michigan Dept. of Treasury*, 489 U.S. 803 (1989), the state courts may be in the best position to determine how to comply with the mandate of equal treatment. The State of California agrees with petitioner that if this Court holds Proposition 13 unconstitutional, it should remand to the state courts for appropriate relief. Pet. Br. at 50.

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[7] An escape assessment is authorized for past years when property is not on the local roll or when underassessed. See Cal. Rev. & Tax. Code, § 532.

In 1978, the adoption of Proposition 13 by an overwhelming majority of California voters discarded a century-old system of property taxation and replaced it with what has become the established revenue structure of that state. The establishment of that structure has been momentous and has had far-reaching consequences to virtually all elements of California's system of revenues. Any undoing of Proposition 13 will result in chaos in the California financial structure, and an opportunity to deal with these problems should be granted to the state before any adverse decision by this Court is made effective. The State of California agrees with the position taken by the California Assessor's Association in its Amicus Brief on this question.

CONCLUSION

For the foregoing reasons, the judgment of the California Court of Appeal should be affirmed. If that judgment is not affirmed, then this Court's decision should be given prospective effect.

Respectfully submitted,

DANIEL E. LUNGREN
Attorney General of the
State of California

ROBERT D. MILAM,
Counsel of Record
Deputy Attorney General

Attorneys for Amicus Curiae
State of California

APPENDIX

STATE OF CALIFORNIA (Seal)

STATE BOARD OF EQUALIZATION

1020 N Street, Sacramento, California
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(916) 445-4982

WILLIAM M. BENNETT
First District, Kentfield

BRAD SHERMAN
Second District, Los Angeles

ERNEST J. DRONENBURG, JR.
Third District, San Diego

MATTHEW K. FONG
Fourth District, Los Angeles

GRAY DAVIS
Controller, Sacramento

BURTON W. OLIVER
Executive Director

CAO 91/26

December 18, 1991

TO COUNTY ASSESSORS ONLY:

QUESTIONNAIRE ON IMPLEMENTATION OF MARKET VALUE ASSESSMENT ROLL

The passage of Proposition 13 on June 6, 1978 required assessors to make radical changes to their assessment rolls in a very short time. Although the job was difficult, the assessors were able to make appropriate adjustments to all real property values and deliver their rolls by the end of July. Most of these rolls contained numerous

errors, but the great majority of the assessments were made correctly.

The *Nordlinger* case raises the possibility that assessors will have to reverse course, to change their Proposition 13 rolls to market value rolls. A decision in the *Nordlinger* case is expected as early as April but as late as July 1992. If the Court invalidates Section 2 of Article XIII A, it is likely the Court would allow the state to return to a market value system on an orderly basis. However, it is possible that the 1992 assessment rolls will have to reflect equalized market value.

In either case, the entire assessment community will be faced with a very difficult job. In 1978, most of the data needed to adjust the assessments existed in the assessors' offices, and the assessors had large appraisal staffs as compared to today. A change to a market value assessment system will no doubt be much more difficult than the 1978 change to the Proposition 13 system.

Enclosed is a questionnaire that is designed to provide early identification of the major administrative problems that would be faced by assessors and the Board in the event the Supreme Court invalidates the assessment provisions of Proposition 13. The results of the questionnaire should help assessors, the Board, and the Legislature prepare for an orderly return to a market value assessment program in the event the Supreme Court requires us to do so.

Many if not most of the questions ask you to "estimate" or to make statements about methods you "would use" under various circumstances. These are highly subjective questions; please be assured we will not use your

responses to evaluate your assessment operation. Also, the "early" nature and short time for answering this questionnaire must be emphasized. We presume that many of your answers will change as more thought is given to planning for a return to market value.

In addition to the questionnaire, an extract from our last pre-Proposition 13 Budgets and Workload is enclosed. You may find the data helpful in estimating staffing needs for an equalized roll.

Please mail your responses by December 31, 1991. If you have questions, please contact our Real Property Technical Services Unit at (916) 445-4982.

Sincerely,
/s/ Verne Walton
Verne Walton, Chief
Assessment Standards
Division

VW:sk
Enclosures

County_____

PROPOSITION 13 –
U.S. SUPREME COURT QUESTIONNAIRE

ASSUMPTIONS

- The U. S. Supreme Court invalidates the acquisition value concept (reappraisal upon change in ownership or new construction) in June 1992.

- County assessors are required to return to a market value, mass appraisal system.

- Unless otherwise indicated, the assessor is required to produce a market value roll for the 1992/93 assessment year.

QUESTIONS

Staffing

1. Please indicate your existing staff level (for "a" through "d," include "working" supervisors – these are supervisors who spend one-half or more of their time performing work similar to the work performed by their subordinates):

   a. ___ Real Property Appraisers

   b. ___ Business Property Appraisers

   c. ___ Transfer (Change in ownership) staff

   d. ___ Clerical

   e. ___ Administrators

   f. ___ Other (Cadastral drafting, etc.)

2. Of those, how many have experience in a market value, mass appraisal environment (as contrasted with the post-Proposition 13 environment)?

   a. _____ Real Property Appraisers

   b. _____ Business Property Appraisers

   c. _____ Clerical

   d. _____ Administrators

3. (a) Over the short-term (up to 1 year), would you need to increase your staff level to produce a 1992/93 equalized roll?

   More appraisers ___Yes ___No

   More other staff ___Yes ___No

   (b) Of these, what portion will be temporary staff for the transition period only?

   ___ Small

   ___ Medium

   ___ Large

   (c) Do you expect to make temporary hires of appraisers with pre-13 experience? ("Pre-13 appraisers" are those experienced in mass appraisal practices.)

   ___Yes

   ___No

4. (a) Over the long-term (1-5 years), do you think that you will need more real property appraisers or other staff in order to produce an annual equalized roll?

   More appraisers ___Yes ___No

   More other staff ___Yes ___No

(b) If so, what do you think would be the magnitude of the needed increase in your appraisal staff?

___ Appraisers

___ Other Staff (Please identify _____.)

Training

5. Please estimate the amount of *additional* training, if any, your *existing* appraisal staff would need to adapt to a mass appraisal environment.

___ days of training per appraiser, pre-13 appraisers.

___ days of training per appraiser, post-13 appraisers.

6. Please estimate the amount of additional training you would expect from the Board (over and above existing levels) during 1992-93 by indicating the number of attendees for:

___ Two-day workshops (appraisers and others)

___ Four-day classes (existing appraisers)

7. If you anticipate hiring additional appraisal staff, please estimate the amount of training you would request from the Board for these new appraisers (1992-93 only) by indicating the number of new appraisers you would send to each of the classes identified below:

___ Course 1 – Introduction to Appraising for Property Tax Purposes.

___ Course 2a – Replacement Cost Estimating of Residential Structures.

___ Course 3 – Residential Appraisal Procedures.

___ Other Courses (Please specify _____.)

8. What additional classes do you feel that the Board can provide to assist your office during the transition period if Proposition 13 is invalidated?

_____

_____

_____

9. Do you recommend that any mass appraisal classes be conducted before June 1992 in anticipation of Proposition 13 being overturned?

___Yes

___No

Workload

10. What is the total number of secured parcels in your county (as of March 1, 1991)?

___secured parcels

11. If possible, please provide by property types:

a. Residential _____

b. Commercial _____

c. Industrial _____

d. Agricultural _____

e. Others _____

12. If you were required to assess all real property at market level, please estimate the effect on your appeals workload. (Number of appeals filed.)

___Existing workload (Proposition 13 roll)

___Equalized roll workload

13. (a) Could you produce a market value assessment roll by August 1, 1992 (Assuming a one-month transition period when a decision is rendered by the U.S. Supreme Court)?

___Yes

___No

(b) If so, please identify what you think would be the three most severe limitations of that roll in comparison to a market value roll produced assuming full preparedness.

1. _____

2. _____

3. _____

14. (a) If you could not produce a market value roll by August 1, 1992, please list the major reasons why (e.g., lack of staff, lack of trained staff, lack of mass appraisal computer systems).

_____

_____

_____

_____

(b) If you could not produce a market value roll by August 1, 1992, by what date do you think you could?

_____

15. (a) Once you have produced a market value roll for 1992-93, to what extent would you be able to overcome the limitations described in 13(b) above for the 1993-94 roll?

_____

_____

_____

_____

(b) To the extent that limitations persist in 1993-94, which would be the most formidable; i.e., which would persist beyond 1993-94?

_____

_____

_____

16. Assuming existing resources and a one-year moratorium from having to produce a market value roll, please detail what you think would be the advantages, from an administrative standpoint, of the one-year moratorium as contrasted with having to produce a market value roll immediately.

_____

_____

_____

_____

_____

_____

17. Assuming the change in ownership statutes are invalidated, would you nonetheless continue to maintain base-year records?

___Yes

___No

18. Assuming the new construction statutes are invalidated, would you be able to nonetheless continue to track new construction activity as a separate element of your total roll value?

___Yes

___No

(a) Do you have that capability now?

___Yes

___No

19. Many counties have probably been unable to maintain the detailed property and building records needed for a quality mass appraisal program. Describe the current state of your property characteristics records.

___Acceptable

___Fair

___Out-of-date

20. If the quality of your current records is less than acceptable, please estimate how long it would take to raise those records to a level of quality that would facilitate a reliable mass appraisal program, assuming adequate resources (see question 4 above):

___years

21. Please indicate below whether you utilize or have available computer-assisted appraisal techniques (e.g., sales ratio programs, multiple regression programs, neighborhood trending programs):

	Use		Available	
Sales ratio	___yes	___no	___yes	___no
Multiple regression	___yes	___no	___yes	___no
Neighborhood trending	___yes	___no	___yes	___no

Others (please identify)_____

_____

22. For each of the broad property types indicated below, identify the primary method you think you would use, for the first market roll, to adjust your base-year value assessments to market value (e.g., regression analysis, neighborhood trending, inflation trending, field appraisals)?

_____Residential

_____Commercial

_____Industrial

_____Agricultural

23. A commonly-suggested method for producing an equalized roll for 1992-93 is to trend base-year values to current value (in effect, apply market indexing instead of the 2-percent-per-year factor). For example, assume a property has a 1975 base-year value and had new construction for 1982.

	Base Year Value	Prop. 13 Trend	Prop. 13 Value (1992)	Market Trend[1]	Market Value (1992)
1975	$10,000	1.3864	$13,864	3.10	$ 31,000
1982	$50,000	1.2070	$60,350	2.05	$102,500
			$74,214		$133,500

[1] The "Market Trend" numbers are for illustration purposes only.

24. Assume the court and/or the Legislature requires you to adjust all base-year values to market value, and the above method is specifically identified as one acceptable method for producing the first equalized roll.

(a) If the "Market Trend" factors were provided to you, how long would it take your existing staff[2] to make these adjustments and produce an "equalized" roll on this basis?

___weeks

(b) If the above method is to be used but you are required to produce the market factors for your own county, estimate the time needed to produce the factors and the equalized roll.

___weeks: county-wide factors

___weeks: separate factors for land and improvements

___weeks: separate property type factors (e.g., residential, commercial, industrial, agricultural.)

25. Prior to Proposition 13, the Board calculated statistical measures of the quality of each county's assessment roll. The "median ratio" (MR) is the ratio of total assessed value to market value. Assuming that you would utilize the methods identified in question 22 above, please estimate for each of the property

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[2] Since such computations would not involve appraisal judgment, clerical and other non-certified staff could perform much of this work.

types below the level of the "median ratio" for both the 1992-93 and 1993-94 rolls:

1992-93	1993-94	
___	___	Residential
___	___	Commercial
___	___	Industrial
___	___	Agricultural
___	___	Overall

26. Assume for purposes of this question that a quality assessment roll would yield a median ratio of at least 90% with a coefficient of dispersion no greater than 16% for medium and large size counties or 20% for small counties. Under this assumed, admittedly arbitrary standard, please estimate how long it would take you to produce, by property type, a quality assessment roll. Assume staffing levels contemplated in question 4 above.

___years	Residential
___years	Commercial
___years	Industrial
___years	Agricultural
___years	Overall

27. What existing programs could be eliminated in a conversion from Proposition 13 system to a market value system?

_____

_____

_____

28. Assume the Supreme Court invalidates the Proposition 13 assessment system but provides no specific direction to the state as to how or when an equalized system should be reinstituted. In your view, what

are the most important changes to law (statutes and/or constitutional provisions) you would suggest to the Legislature? What are the most important changes (survey program, technical assistance, rules, or other) you would suggest to the State Board of Equalization? Here are examples of topics that may be of concern to you.

___ First lien date to be equalized.

___ Supplemental assessments.

___ If 1992 is to be equalized, date to produce preliminary roll, date to produce tax roll, date to file assessment appeal, date taxes delinquent.

___ Temporary moratorium on class-action appeals and lawsuits with respect to assessor's implementation of equalized roll.

___ Legislative and/or SBE-sanctioned methods for producing first equalized roll (e.g. factor base year values by market factor).

___ SBE survey program.

___ SBE technical support.

___ Intracounty and intercounty equalization.

___ SBE authority to require Board of Supervisors to provide adequate funding for assessors.

___ Uniform minimum electronic data base requirements. (Uniform data base available to SBE and Legislature).

___ SBE to provide multiple regression and other computer-oriented technical services.

___ Restore Revenue and Taxation Code section 405.6 (cyclical appraisal requirement).

___ Phase-in of major assessed value increases.

___ R&TC section 110 and Rule 2, presumption that sale price equals value.

___ Increase Homeowners' Exemption.

___ Subvention of Homeowners' Exemption

___ Revenue effects (e.g., neutrality concept)

Budget

29. Do you foresee additional funds coming from your county general fund?

___Yes

___No

30. Do you foresee reduced funds from your county general fund?

___Yes

___No

31. Do you anticipate additional funds available for technological assistance?

___Yes

___No

32. Do you anticipate any savings in your budget due to cutting out programs needed for Proposition 13 implementation?

___Yes Please describe_____

_____

___No

Assessor's Comments

33. You may have ideas and comments that go beyond the scope of the questionnaire. Please use as many additional pages as you need to make your comments.

Person to contact regarding this questionnaire:

Name_____

Telephone_____